LIBRARY
SUPREME COURT, U.S.

Supreme Court, U.S.
FILED
DEC 9 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-492

LLOYD CORPORATION, LTD.,
Petitioner,

v.

DONALD M. TANNER, ET AL.,
Respondents.

PETITIONER'S REPLY BRIEF

GEORGE BLACK, JR.
ROBERT J. MILLER
BLACK, KENDALL, TREMAINE,
BOOTHE & HIGGINS
520 S.W. Sixth Avenue
Portland, Oregon 97204

JOHN H. PICKERING
WILMER, CUTLER & PICKERING
900 17th Street, N.W.
Washington, D. C. 20006

Counsel for Petitioner

WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D. C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-492

LLOYD CORPORATION, LTD.,
Petitioner,

v.

DONALD M. TANNER, ET AL.,
Respondents.

PETITIONER'S REPLY BRIEF

Events subsequent to the filing of the petition have intensified the need for this Court's authoritative resolution of the important question presented: Whether a shopping center owner must permit noncommercial handbilling that is not directly related to his use of the land.

This Court has since declined to review two California cases involving the general issue which reached different results: *Diamond* v. *Bland*, enjoining a shopping center from interfering with the solicitation of petition signatures on its land;[1] and *Ball* v. *California*, where the petitioner was convicted of trespass for soliciting petition signatures in the parking lot of Disneyland without the

---

[1] Petition for rehearing of denial of certiorari denied October 12, 1971, *sub nom. Homart Development Co.* v. *Diamond*, No. 1469 O.T. 1970, —— U.S. ——.

owner's permission.[2] Although we appreciate that these cases may be distinguishable and otherwise regarded as inappropriate for review, we respectfully submit that the result has been to add further uncertainty to an already confused subject. Resolution of this uncertainty is especially important before political campaigning begins in the coming election year. Supporters of various candidates and propositions will want to use shopping center property for handbilling activities. Shopping center owners throughout the United States who regard handbilling as distracting to their business will rely upon the language of this Court's *Logan Valley* decision, 391 U.S. 308 (1968), as authority for their right to exclude political handbillers. Those handbillers, in turn, will rely upon lower court decisions in this and other cases as authority for their right to use shopping center lands to handbill for their candidates and causes. Confusion and controversy will be inevitable unless this Court promptly clarifies the law by deciding the handbilling question left open in *Logan Valley* which is presented by this case.

None of the arguments in the respondents' brief in opposition have minimized the importance of the question presented in this case or contradicted the fact that it was left open by this Court in *Logan Valley*. Respondents do make a specious effort to distinguish *Logan Valley* by asserting that this case does not involve picketing and that handbilling, unlike picketing, "involves only pure expression" (Brief p. 6). This effort is squarely contradicted by *Logan Valley* which not only involved handbilling as well as picketing (391 U.S. at 312), but also expressly recognized that "[h]andbilling, like picketing, involves conduct other than speech . . ." (*id.* at 315-16), and did not differentiate in its treatment of handbilling and picketing (*id.* at 322 and n.11).

---

[2] Petition for certiorari denied October 26, 1971, No. 71-209, —— U.S. ——.

Equally without merit is the apparent attempt of respondents to suggest—by dwelling in their brief on the extent to which petitioner permitted certain noncommercial activities on its premises—that petitioner discriminated against respondents in favor of other groups whose purposes it approved. As found by the District Court and noted in the petition (p. 12, n.5), petitioner did invite some activities to attract shoppers, such as Boy Scout displays and speeches by presidential candidates Eugene McCarthy, Robert Kennedy and Richard Nixon, and also permitted some charitable solicitations. However, none of those activities involved handbilling, which petitioner regards as bad for business and which, as the District Court also found, petitioner "prohibits . . . within the Mall" (Pet. App. p. 9a). Since petitioner indiscriminately excluded all handbilling, there is no basis for respondents' apparent suggestion that petitioner discriminated against them in favor of others. Likewise, the order under review makes no reference to discrimination. It is an absolute prohibition against any interference with any noncommercial handbilling, and is thus obviously not grounded on discrimination.

To the extent that the activities that the petitioner permitted, in the belief that they were good for business, had any relevance, they were at the most considered by the courts below as evidence that the petitioner's shopping center is the "functional equivalent of a public business district."[3] It having been found that, like the land in *Logan Valley*, this shopping center is that "functional equivalent," the question then remains which was left open in *Logan Valley*—is the petitioner constitutionally required to allow noncommercial handbilling that is not directly related to its use of the land?

---

[3] In reality these particular activities are more persuasive in tending to show that the petitioner's land is private than they are as evidence that it has a public character.

For the reasons stated in the petition and this reply brief, certiorari should be granted to decide this question.

Respectfully submitted,

GEORGE BLACK, JR.
ROBERT J. MILLER
BLACK, KENDALL, TREMAINE,
BOOTHE & HIGGINS
520 S.W. Sixth Avenue
Portland, Oregon 97204

JOHN H. PICKERING
WILMER, CUTLER & PICKERING
900 17th Street, N.W.
Washington, D. C. 20006

Counsel for Petitioner